

By: Representative Frierson

To: Marine Resources

## HOUSE BILL NO. 770

1 AN ACT TO AMEND SECTIONS 49-15-36 AND 49-15-37, MISSISSIPPI  
2 CODE OF 1972, TO CONFORM STATE LAW TO FEDERAL REGULATORY  
3 TERMINOLOGY; TO FURTHER AMEND SECTION 49-15-37, MISSISSIPPI CODE  
4 OF 1972, TO GIVE THE DEPARTMENT OF MARINE RESOURCES FLEXIBILITY IN  
5 THE RELAYING OF OYSTERS; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** Section 49-15-36, Mississippi Code of 1972, is  
8 amended as follows:

9 49-15-36. (1) The commission shall have full jurisdiction  
10 and control of all public and natural oyster reefs and oyster  
11 bottoms of the State of Mississippi.

12 (2) Public reefs may be opened for harvest of oysters during  
13 the season on a rotating basis. If the commission determines that  
14 a particular reef has been over-harvested or that a high  
15 percentage of sublegal size oysters exist on a particular reef and  
16 that harvest could damage future oyster crops, the commission may  
17 close designated reef areas and keep them closed during the  
18 season. Reefs open for harvest during the season shall be open  
19 every Monday through Saturday, and subject to the availability of  
20 funds, the reefs shall be open on Sunday.

21 (3) The commission shall promulgate regulations regarding  
22 the closing of oyster reefs which are determined to be restricted.  
23 The waters of reefs closed under this chapter shall be tested  
24 between five (5) and ten (10) days after closure. When that  
25 testing indicates the oysters on the closed reef are suitable for  
26 consumption, the reef shall be opened for the taking of oysters as  
27 soon as notice of that opening may be made to interested parties.  
28 The authority to open or close oyster reefs under this chapter

29 shall be solely within the discretion of the commission, acting  
30 through the department. The Gulf Coast Research Laboratory or  
31 other certified laboratory shall cooperate with the department and  
32 shall conduct necessary tests to determine the condition of oyster  
33 reefs at the request of the department. The department may limit  
34 the sale of oysters for human consumption, but all matters  
35 concerning the harvesting of oysters shall be within the  
36 jurisdiction of the commission.

37 (4) (a) The commission may issue special permits for the  
38 purpose of catching oysters outside the open season or in areas  
39 not normally open to harvest to those nonprofit organizations that  
40 are tax exempt under Section 501(c) of the United States Internal  
41 Revenue Code and which have on file with the State Tax Commission  
42 a tax exemption letter issued by the United States Internal  
43 Revenue Service.

44 (b) The commission shall promulgate rules and  
45 regulations governing the taking of oysters by the nonprofit  
46 organization and shall issue such regulations to all organizations  
47 upon request and at the issuance of the special permit.

48 (5) The commission shall establish a reasonable period of  
49 time for depuration of oysters replanted from restricted waters.  
50 That period of time shall be consistent with the maintenance of  
51 the public health and may vary from time to time and from one reef  
52 to another in accordance with environmental conditions.

53 **SECTION 2.** Section 49-15-37, Mississippi Code of 1972, is  
54 amended as follows:

55 49-15-37. By order of the commission, the director, under  
56 the direction and control of the commission, shall employ boats,  
57 crews and laborers and shall cultivate the public reefs of the  
58 state, and shall dredge the oysters in the Mississippi Sound from  
59 places where they are too thick, and shall spread them on reefs  
60 where they are too thin, and shall carry shells from the factories  
61 and spread them in places where the oyster beds can be improved

62 and enlarged. The department may purchase other materials as may  
63 be equally suitable for the propagation of oysters. The  
64 department in cultivating the reefs, transplanting and spreading  
65 oysters and shells and other suitable materials, may expend any  
66 funds available for that purpose. In taking seed oysters, care  
67 shall be used to not injure or destroy the merchantable oysters on  
68 the reefs from which they are taken. The seed oysters shall be  
69 tonged from the "conner" or seed reefs, unless it is practicable  
70 and safe to dredge those oysters. The commission may, by orders  
71 spread on its minutes, establish new bedding grounds at those  
72 places within the boundaries of the state as it may determine, on  
73 advice of the director, or on advice of technical governmental  
74 experts, or competent aquatic biologists. On existing public  
75 reefs in which oysters exist and in waters not of a safe sanitary  
76 quality as determined by the department, the commission shall  
77 prohibit any person, firm or corporation from taking oysters from  
78 those areas. The commission shall from time to time remove the  
79 oysters from the areas and relay or replant them in an approved  
80 area for a period of time under Section 49-15-36 before they may  
81 be harvested. The commission may transport the oysters to an  
82 onshore, molluscan depuration facility for the purpose of proving  
83 depuration technology and for other experimental purposes. In  
84 connection with the testing of onshore, molluscan depuration  
85 technology, the commission may sell or dispose of the relaid  
86 oysters in a manner consistent with all applicable state and  
87 federal laws and regulations. Any funds received from the sale of  
88 the oysters shall be used in a like manner as those funds received  
89 under Section 49-15-38.

90 If the commission finds that onshore, molluscan depuration  
91 technology proves to be successful, the commission may issue  
92 permits to private enterprise which may locate depuration  
93 facilities in Hancock, Harrison and Jackson Counties. The  
94 commission shall promulgate rules and regulations for the taking

95 of oysters from reefs for transport to an onshore, molluscan  
96 depuration facility and for the operation of the facilities. Each  
97 depuration facility operated by private enterprise shall return  
98 oyster shells to the oyster reefs for replanting under the proper  
99 supervision of the department and under Section 49-15-38.

100 The commission may issue permits to persons to remove oysters  
101 by dredging or otherwise from water bottoms which are not of a  
102 safe sanitary quality for oysters for human consumption even  
103 though those areas may have been reserved for tonging only in  
104 Section 49-15-39. These areas shall be designated as seed  
105 grounds, and permits to persons shall be issued only for the  
106 purpose of transplanting oysters to privately leased Mississippi  
107 territorial waters. The commission may permit the transplanting  
108 of these seed oysters by a duly authorized public agency.

109 The commission may, upon certification of the department that  
110 the water bottom from which oysters are to be removed is not of a  
111 safe, sanitary quality for oyster production for human consumption  
112 and has been unsafe for a period of at least one (1) year  
113 immediately preceding certification, and upon complying with the  
114 following requirements, permit the dredging of oysters from  
115 restricted public areas and relaying the oysters to private leased  
116 grounds in the State of Mississippi:

117 (a) Permittee must hold valid lease of oyster bedding  
118 grounds in the State of Mississippi;

119 (b) Permittee must be bonded in compliance with the  
120 permit system established by the commission;

121 (c) Permittee must fulfill all permit requirements as  
122 established by the commission;

123 (d) Permittee shall not move oysters from one  
124 restricted area to another restricted area;

125 (e) Permittee shall move oysters only to an area leased  
126 by the commission after April 13, 1977; and

127 (f) Permittee shall not move oysters from the  
128 restricted area without the presence of an employee of the  
129 department at all times, from the dredging of the oysters from the  
130 restricted areas to their deposit on private leased grounds or to  
131 an onshore, molluscan depuration facility.

132 Harvesting of oysters shall be permitted only during daylight  
133 hours and with the most efficient gear possible consistent with  
134 conservation requirements of not damaging the reefs. This shall  
135 include permission to use two (2) dredges per boat on restricted  
136 areas and on private leased grounds.

137 Any person obtaining a permit to remove oysters from seed  
138 grounds shall post a penal bond of One Hundred Dollars (\$100.00)  
139 per leased acre with the commission to be forfeited upon any  
140 violation of this section. The bond may be approved by the  
141 director of the department if the director finds the bond to be  
142 secured by sufficient property or sureties.

143 The commission shall regulate the amount and time of taking  
144 of oysters from seed areas and shall supervise the removal,  
145 planting and harvesting of oysters from the areas. The time set  
146 for the taking of oysters from restricted seed areas for relaying  
147 or replanting and the time set for the taking of oysters from  
148 private leased grounds shall be separated by not less than a  
149 period of time determined under Section 49-15-36 during which  
150 neither activity may be allowed.

151 The commission shall regulate the taking of oysters from  
152 restricted seed areas and the subsequent depuration of the oysters  
153 to protect public health, while at the same time fostering the  
154 utilization of the state's oyster resources. The regulations  
155 shall include the setting of the period of depuration for the  
156 oysters by the use of appropriate techniques and provide for an  
157 employee of the department to be present when the oysters are  
158 taken from restricted seed areas, and transported, held and  
159 deposited on private lease grounds. Any person, firm, corporation

160 or private lease holder engaged in the depuration of oysters shall  
161 pay to the department an amount equal to the regular compensation  
162 of the employee of the department for the time the employee  
163 actually spends performing the duties, not to exceed Two Hundred  
164 Dollars (\$200.00) per twenty-four-hour period.

165 Only persons who have been residents of Mississippi for at  
166 least five (5) years shall be eligible to obtain permits for  
167 removal of oysters from seed grounds.

168 The commission shall designate certain \* \* \* reefs in the  
169 state as public reefs and shall remove oysters from water bottoms  
170 which are not of a safe, sanitary quality for oyster production  
171 for human consumption and shall transport the oysters to the  
172 public reefs \* \* \*.

173 **SECTION 3.** This act shall take effect and be in force from  
174 and after its passage.